



U.S. Department
of Transportation
**Federal Aviation
Administration**

Aviation Safety

800 Independence Ave
Washington, DC 20591

July 28, 2021

Exemption No. 5100N
Regulatory Docket No. FAA-2001-10857

Major General Russell Mack
Assistant Deputy Chief of Staff, Operations
HQ USAF/A3
1480 Air Force Pentagon
Washington, DC 20330-1480

Dear General Mack:

This letter is to inform you that the Federal Aviation Administration (FAA) has granted your petition to extend Exemption No. 5100M. This letter transmits the FAA's decision, explains its basis, and provides the conditions and limitations of the exemption, including the date the exemption ends.

The Basis for the FAA's Decision

By letter dated June 24, 2021, you petitioned the FAA on behalf of the U.S. Department of Defense (DOD) for an extension of Exemption No. 5100M. That exemption from §§ 91.117(a) and (b), 91.159(a), and 91.209(a)(1) and (b) of Title 14, Code of Federal Regulations (14 CFR) allows the DOD to conduct air operations in support of drug law enforcement and traffic interdiction without meeting certain requirements pertaining to (1) aircraft speed, (2) cruising altitudes for flights conducted under visual flight rules, and (3) the use of aircraft position lights and anti-collision light systems.

In your petition, you indicate that there has been no change in the conditions and reasons relative to public interest and safety that were the basis for granting the original exemption.

The FAA's Decision

The FAA has determined that good cause exists for not publishing a summary of the petition in the *Federal Register*, because the requested extension of the exemption would not set a precedent and any delay in acting on this petition would be detrimental to DOD.

AFS-22-00040-E

The FAA has determined that the justification for the issuance of Exemption No. 5100M remains valid with respect to this exemption and is in the public interest. Therefore, under the authority provided by 49 U.S.C. §§ 106(f), 40113 and 44701, which the FAA Administrator has delegated to me, I hereby grant the U.S. Department of Defense an exemption from 14 CFR §§ 91.117(a) and (b), 91.159(a), and 91.209(a)(1) and (b) to the extent necessary to allow DOD to conduct air operations in support of drug law enforcement and traffic interdiction without meeting certain requirements pertaining to (1) aircraft speed, (2) cruising altitudes for flights conducted under visual flight rules, and (3) the use of aircraft position lights and anti-collision light systems, subject to the following conditions and limitations.

Conditions and Limitations

1. The pilot of an aircraft engaged in operations authorized herein is not relieved from the requirements of Section 91.113.
2. Operations under this exemption are authorized only to the extent necessary for the interdiction aircraft to obtain positive identification of, and maintain visual contact with, a suspect aircraft.
3. The pilot shall ensure that a dedicated observer, in addition to the pilot, is on board the petitioner's aircraft.
 - a. That observer's sole responsibility shall be to assist the pilot in seeing and avoiding other traffic; or
 - b. When use of a dedicated observer in the interdiction aircraft is not possible due to aircraft configuration, the use of primary radar equipment that is capable of detecting all aircraft operating in the vicinity of the DOD aircraft, or a dedicated spotter aircraft with a qualified observer on board, may be used to assist the pilot of the interdiction aircraft in seeing and avoiding other aircraft.
 - i. Spotter aircraft or aircraft having onboard primary radar equipment for the purpose of detecting other aircraft must maintain two-way radio communications with the interdiction aircraft to provide the pilot of the interdiction aircraft with advisories regarding the relative positions of other aircraft in the area.
 - ii. Spotter aircraft and primary radar surveillance aircraft shall be operated for the sole purpose of detecting other aircraft in the vicinity and advising the pilot of the interdiction aircraft of potential collision hazards and shall not be engaged in the interdiction operation.
4. Operations in noncompliance with Section 91.209(a)(1) are authorized only for those aircraft engaged in air interdiction operations and only when one of the following alternative means of deriving traffic information is used:

- a. Primary radar equipment capable of detecting all aircraft operating within the vicinity of the DOD interdiction aircraft; or
 - b. Spotter aircraft operating in a position to visually detect other aircraft in the vicinity of the interdiction aircraft.
 - i. Interdiction aircraft must maintain two-way radio communications with the spotter aircraft or the primary radar surveillance aircraft for the purpose of receiving traffic information regarding other aircraft operating in the vicinity.
 - ii. Only DOD interdiction aircraft are authorized to operate without lighted position or anti-collision lights. Any other aircraft used by the DOD as spotter aircraft or primary radar surveillance aircraft must be operated in compliance with Section 91.209(a).
 - iii. Interdiction aircraft shall operate the aircraft's position lights to the maximum extent practicable and may only operate without lights when necessary to avoid detection by elements engaged in illegal drug activities.
5. The pilot of an interdiction aircraft shall:
- a. Establish two-way radio communication with the appropriate air traffic control (ATC) tower before entering a Class B, Class C, or Class D airspace area;
 - b. Comply with all instructions and clearance from the tower; and
 - c. Maintain two-way radio communication with the tower while in those airspace areas.
6. The DOD shall ensure that all pilots and crewmembers who will conduct airborne drug interdiction operations are thoroughly briefed and have a complete understanding of the conditions and limitations of this exemption.
7. The DOD shall ensure that all aircraft used to conduct operations under this exemption are equipped with a Mode C transponder and that the transponder is operated on the appropriate code or as assigned by ATC.
8. The pilot of an interdiction aircraft may not operate at an altitude in noncompliance with Section 91.159(a) within a Class B or Class C airspace area unless specifically authorized by the ATC facility having jurisdiction over that airspace.

9. This exemption is not valid for operations outside the United States.

Failure to comply with any of the above conditions and limitations may result in the immediate suspension or rescission of this exemption.

The Effect of the FAA's Decision

The FAA's decision amends Exemption No. 5100M to 5100N and extends the termination date to September 30, 2024, unless sooner superseded or rescinded.

To request an extension or amendment to this exemption, please submit your request by using the Regulatory Docket No. FAA-2001-10857 (<http://www.regulations.gov>). In addition, you should submit your request for extension or amendment no later than 120 days prior to the expiration listed above, or the date you need the amendment, respectively.

Any extension or amendment request must meet the requirements of 14 CFR § 11.81.

Sincerely,

/s/

Robert C. Carty
Deputy Executive Director, Flight Standards Service